

ENTERED

February 02, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATTHEW GILBERT,

Plaintiff,

VS.

DRIVEN BRAND SHARED SERVICES,
LLC,

Defendant.

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CIVIL ACTION NO. 4:23-CV-01747

ORDER

Before the Court are United States Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation filed on December 11, 2023 (Doc. #16), Defendant Driven Brand Shared Services, LLC's Objections (Doc. #19), and Plaintiff Matthew Gilbert's Response (Doc. #20). The Magistrate Judge's findings and conclusions are reviewed de novo. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

In her Memorandum and Recommendation ("M&R"), Judge Ho recommended that Defendant's Motion to Dismiss (Doc. #5) be granted as to Plaintiff's common-law fraud and fraudulent inducement claims and denied as to Plaintiff's breach of contract and promissory estoppel claims. Doc. #16. Defendant objects only as to the recommendation that its Motion be denied as to the breach of contract and promissory estoppel claims. Doc. #19. First, Defendant contends that the M&R erred by ruling on the unripe legal issue regarding whether there was a valid contract or enforceable promise between Plaintiff and Defendant. *Id.* at 4. However, this objection is overruled because the M&R repeatedly and specifically notes that Plaintiff pleaded

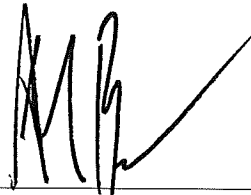
sufficient facts for his breach of contract and promissory estoppel claims, thus it is evident that there has not been a finding of law as to these claims. *See* Doc. #16 at 7, 16. Next, Defendant asserts that the M&R is clearly erroneous in finding that Plaintiff adequately alleged his breach of contract and promissory estoppel claims. Doc. #19 at 5–10. But the Court disagrees. Judge Ho’s reasoning clearly comports with the law. *Compare* Doc. #16, with *Zenor v. El Paso Healthcare Sys., Ltd.*, 176 F.3d 847, 862–63 (5th Cir. 1999), and *Vida v. El Paso Emps. Fed. Credit Union*, 885 S.W.2d 177, 181–82 (Tex. App.—El Paso 1994). Thus, Defendant’s objections are overruled.

Accordingly, Defendant’s Motion to Dismiss (Doc. #5) is GRANTED as to Plaintiff’s common-law fraud and fraudulent inducement claims and DENIED as to Plaintiff’s breach of contract and promissory estoppel claims.

It is so ORDERED.

FEB 02 2024

Date

A handwritten signature in black ink, appearing to be 'A. H. Bennett', written over a horizontal line.

The Honorable Alfred H. Bennett
United States District Judge